OMBUDSMAN
ONTARIO

Between a ROCK and a HARD PLACE

Parents forced to place their children with severe disabilities in the custody of Children's Aid Societies to obtain necessary care.

FINAL REPORT

André Marin
Ombudsman of Ontario
May 2005

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Special Investigation:

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Between a Rock and a Hard Place

1 Jennifer Bray's story is not unique. Her 11-year-old son, Wesley, is under the care of a Children's Aid Society and her custodial rights have been legally suspended. If she wants to visit Wesley, she needs to report to the Children's Aid Society. She has had to turn over her son's health card. Technically, she has lost the right to make legal decisions on Wesley's behalf. Yet Jennifer Bray is not a neglectful or incapable parent. She is a loving and able mother. Fate gave her a child who, because of his severe developmental delay, is unmanageable. In return, we in Ontario have given her something almost as cruel. We have given her the choice of either abandoning him, or going without the care he requires. We are making her give up her rights as a parent even though she is not standing in the way of him getting the support he needs. We are doing this for no good reason other than bureaucracy, technicality and entrenched position.

2 Jennifer Bray's story is not unique because there are dozens of other families who are either faced with, or have had to make the same desperate sacrifice. Many have had to sit in family court offices, responding to children's aid motions. Some of them have either had to declare that they are "unable to care adequately for their children" or bear the stigma of a judicial finding that their child is "in need of protection."

3 This should simply not be happening. As the Minister of Children and Youth Services said recently in the Legislature, "no family in this province, in this day and age, should have to consider giving up their children to get the help" they need. This statement is encouraging, but it is the same thing that was said when Child Advocate Judy Finlay reported to the Government of Ontario in a non-public report in June of 2000. It is the same thing that was said in 2001 when former Ombudsman Clare Lewis Q.C. launched an investigation into the problem. Indeed, government leaders under [successive] governments have said repeatedly that no parent should be forced to give up custody of a child in order to access specialized support yet it is still happening, year after year. Why? It is happening because governments have preferred to study the matter to death rather than solve it. This much repeated sacrosanct principle is the victim of acute government maladministration. Unless something is done urgently, it will be happening not only "in this day and age," but again tomorrow and a year after tomorrow. It is time for immediate action. In my opinion, the Government of this, the richest province in Canada, should even be prepared to take drastic measures, so that parents do not have to. But drastic measures by the Province are not needed. For those children with special needs already in the care of

Children's Aid Societies, all that is required is the reallocation from one budget to another, of funds that are already being spent. For those children with special needs requiring residential placements that are not currently being funded, all that is required is a readiness on the part of Government to assume a financial responsibility equivalent to that which any parent could force on them, simply by declaring their children abandoned. There is no floodgates issue here. There is nothing more than a deep, moral obligation to do the right thing. The infrastructure and bureaucracy of child services in Ontario has failed parents of children with severe disabilities and left them stuck between a rock and a hard place.

Background

4 On April 25, 2005, I announced the first major investigation that I would be undertaking as Ombudsman. The investigation, sparked initially by six complaints, was into whether parents of children with severe disabilities are being forced to place them in the custody of Children's Aid Societies in order for them to obtain necessary care. If the investigation confirmed that this was happening, I would be duty bound to seek a solution. I therefore assigned the investigation to the newly created Special Ombudsman Response Team (SORT). A team of seven personnel, including investigators and senior counsel, supplemented in the latter stages by two additional investigators, conducted the investigation.

5 At the time I announced the investigation I made a plea to the public to come forward with any information that might assist us. The response has been overwhelming. My Office received calls, letters and e-mails from scores of parents and professionals who have experienced this situation first hand. We were also approached by organizations. Among those contacting us were approximately 90 families, all of whom had at least one special needs child. Many had either given up their child to a Children's Aid Society or were contemplating doing so. Several of these people were interviewed formally, as were the six original complainants. We have profited tremendously by the assistance of all of those who came forward.

6 SORT investigators interviewed senior officials from the Ministry of Children and Youth Services including the two Assistant Deputy Ministers with direct responsibility for the care of children with special needs. They were accompanied at the interview by a Regional Director, a Senior Policy Analyst, a Legal Director, and one Legal Counsel. We also spoke with officials at the nine Ministry Regional Offices.

7 SORT investigators contacted 53 Children's Aid Societies as well as 29 of 55 case resolution organizations across the Province of Ontario. We also spoke with community groups, advocacy organizations, residential care providers and others with a direct interest in the issues being investigated. One of the individuals we interviewed was Mrs. Gloria Mogridge, whose son Randy Mogridge died tragically in the fall of 2004, after walking away from a residential facility. Mrs. Mogridge has advocated for resources for families with children with disabilities for many years. We interviewed the Chief Advocate from the Office of Child and Family Service Advocacy and some of her staff.

8 The team reviewed over 1000 pages of documentation and interview transcripts. We requested documentation from the Ministry, including notes prepared for the Minister.

9 All formal interviews were tape-recorded.

10 We received exemplary co-operation from officials at the Ministry.

11 The investigation we conducted proved overwhelmingly that in this province parents of children with severe disabilities are faced with the dilemma of choosing between maintaining their custodial rights or giving them up to ensure residential placement for their children. Sadly, we have a provincial system in which children with severe disabilities are not considered to have any entitlement to residential care – unless they are in the custody of the state. So parents have no choice but to turn to the Children's Aid Societies - institutions that should be dealing with children who are in need of protection. This distracts the Children's Aid Societies from their immediate task of protecting the children of this province. It forces mothers and fathers of children with special needs to declare falsely that they have abandoned their children. It is a heart rendering and painful process.

12 The accounts of seven complainants tell the story more poignantly than general findings or simple statistics could ever do. Before sharing those experiences, however, the legislation and practices that are employed need to be described.

Practices and Provisions

13 Issues of funding to provide adequate care for special needs children has long been an issue. It appears that there have been complaints for more than a decade.

14 The immediate impetus for the current "crisis" was a change in funding practices in 1999. Until that time, "Special Needs Agreements," provided for under the *Child and Family Services Act* were used to arrange required residential care for children who, because of disabilities, could not be managed at home. These agreements would be entered into voluntarily between parents and Children's Aid Societies. They allowed the Societies to assume care responsibilities, and make public funding available, without necessarily requiring parents to give up "custody" over their children. Parents were able to retain many rights, including the right to vary or terminate the agreement, and they could obtain assistance for their children without those children being declared "in need of protection." The Chief Advocate of the Office of Child and Family Service Advocacy (the "Child Advocate") referred to these "Special Needs Agreements" as the least intrusive method of service delivery and one that preserves family integrity. Senior government officials advised my Office that Special Needs Agreements acted as a "safety valve for families who were on the brink."

15 Special Needs Agreements have not been abolished. They are still contemplated by section 30 of the *Child and Family Services Act*. However, the Government stopped providing funds to Children's Aid Societies for such arrangements and directed societies to use their resources for child protection matters.

16 The investigation conducted in 2001 by the former Ombudsman of Ontario found that one of the contributing factors to the problem was a lack of residential facilities for children with special needs. At the time the decision was made to stop funding Special Needs Agreements through Children's Aid Societies, the government did not have the necessary data to decide what level of residential service was required for children with special needs, and no timetable for considering the issue had been generated. In some areas, there are not enough facilities to meet the demand. As a result many children are put on waiting lists. Even when residential spaces are available, there are waiting lists to obtain funding to actually use the spaces.

17 When the moratorium on Special Needs Agreement funding was declared, the Child Advocate recognized that this would create a large crack in the system, through which families would fall. She voiced concerns about the change in practice in her reports, *Special Needs Agreements: Guardianship or Critical Services: Parents Dilemma* (June 2000 and January 2001). Her observations proved prophetic.

18 The misuse of the child welfare regime has proved to be an unpalatable way for those families falling through the cracks to find financial respite. The

Government of Ontario is not legally obliged to place children with special needs in facilities – unless the Children's Aid Societies or the Government of Ontario has custody of them. Where they have custody they have a legal duty under the *Child and Family Services Act* to fund their residential placements. As the Child Advocate put it, the moratorium on Special Needs Arrangements has meant that parents who require residential placements for their children are forced to "manufacture" protection concerns in order to obtain residential placements. Parents can obtain short-term assistance by proclaiming that they are unable to care for their child and then entering into a "Temporary Care Agreement" with a Children's Aid Society.

19 The immediate problem with this "solution" is that parents must compromise their custody and parental rights in the agreement, and then endure the infamy of having their children enter the child welfare system. Yet matters get worse. These agreements are designed to be temporary, yet most extreme special needs cases involve children who require permanent placement. The long-term solution is truly desperate. The child with special needs has to become a "ward," either a society ward or even a permanent Crown ward. In either case, the parent loses their custodial rights. Moreover, a court hearing, with all of its costs and formalities, is required for these orders to be made and the public foundation for the orders is a finding that "the child is in need of protection" and "intervention of the court is necessary in order to protect the child in the future."

20 Since these children are not in need of protection because of inadequate care, the parent has to invoke the operation of clause 37(2)(i). It provides that "a child has been abandoned … [if] that child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody." To get the residential care their child needs, a parent must literally declare they are walking away from their child. The "Risk Assessment Model" developed by the Ministry and used by the Children's Aid Societies notes that:

21 • A deserted/abandoned child is a form of parental neglect.

22 And there it is. A loving parent who is anything but neglectful is forced to stand before a court claiming to be a neglectful one, in order to get their child the residential support they need. It is an ignominy that only wealthy parents, or those lucky enough to find a publicly funded placement can avoid. And it is steeped in irony. When the parent makes that false "admission," the province then must find and fund the residential placement.

The Human Face

23 It is one thing to describe all of this in the abstract. It is another to meet those placed in this cruel dilemma. Prior to April 25, 2005, I had received complaints from six parents chronicling stories of tremendous hardship and desperation. These parents had either made the choice to give up custody to a Children's Aid Society or were struggling with the choice between preserving their custodial rights and obtaining necessary care for their children. The Ministry was formally notified of four of these cases beginning in October 2004. Additional complaints illustrating this problem were received, and continue to be received by my Office. A selection of these cases demonstrates what current policies mean for the lives of people, already burdened with hardships most of us cannot imagine. The people described in the following accounts are not neglectful. They are not out to "milk" the system for more than they deserve. I have been singularly impressed by the devotion and often heroic efforts they have taken for their children with severe challenges. The realities of the current system become clear when one considers their stories.

Wesley, Windsor, Ontario

24 Jennifer Bray, who I introduced at the outset of this report, is a single mother raising two children. Her younger son, 11-year-old Wesley Gray, has been diagnosed with severe developmental delay, and functions at the level of an 18-24 month old child. He also experiences chronic drooling, pica (putting non-food items in the mouth), apraxia (a speech disorder), bowel movement difficulties, aggressive behaviour, and rectal picking and smearing of feces. He is in need of constant supervision and care to meet his daily needs. As he grew older Wesley became unmanageable at home and school, and he was referred to a short-term treatment program at the province's Child and Parent Resource Institute in London.

25 In June 2004, a case conference meeting was held to discuss long-term options for Wesley's care. The Child and Parent Resource Institute reported that Wesley continued to need one-on-one staffing and continued to engage in inappropriate and aggressive behaviours, including smearing feces, slapping, grabbing, kicking, throwing items at staff, hair pulling and biting. While it was Ms Bray's preference to keep Wesley at home with 24-hour assistance, the funding supports she had received prior to Wesley's admission to the Institute were insufficient to meet their needs. Gaining support was a constant struggle. Indeed, Ms Bray had to appeal three times to obtain just under 10 hours of assistance a week through the Special Services At Home and Assistance for Children with Severe Disabilities Programs. She received additional funding in

the summer of 2003 that allowed her to hire a worker for three days a week, however this funding ended in April 2004. Ms Bray began to suffer the effects of trying to cope. She was diagnosed with post traumatic stress disorder, fibromyalgia, and anxiety attacks.

26 The Ministry encouraged Ms Bray to work with Help Link (a non-governmental case resolution mechanism in her community) in order to maximize available community services and to assist her in putting together a plan that would provide her with supports through existing Ministry funded programs. In spite of this, Ms Bray was unable to secure funding to maintain Wesley at home due to the high level of supports he required. Wesley was placed at the Child and Parent Resource Institute, originally for three months, but he remained there for a year. While Wesley was at the Institute Ms Bray worked three days a week and spent two days a week in London visiting her son. When it came time for his discharge, she was not in a position to bring him home. At that point she qualified for less than 10 hours a week of respite care.

27 When Ms Bray contacted the Office of the Ombudsman she was facing a difficult choice, unless another source of funding was found for Wesley's placement in a group home, she would have to sign a Temporary Care Agreement with the Windsor-Essex Children's Aid Society. The Children's Aid Society acknowledged there were no "protection" concerns in the case. It informed the Ministry in June 2004 that,

> there are no protection concerns in this matter that warrants removal of this child. The request for placement is the direct result of the extensive special needs of this child and the lack of services and placements for this child.

28 The Society asked if the Ministry would commit to providing funding for Wesley. When no response was received, the Society wrote again in July once more indicating there were no protection concerns but stating that Ms Bray,

> will be forced to "abandon" her child if the community cannot assist her. WECAS will be required to assume guardianship for Wesley at a significant cost to this organization and a detriment to other programs.

29 The Ministry responded that no funding would be provided outside of the provincial child welfare funding parameters.

30 Eventually, Ms Bray was left with no options. She entered into a Temporary Care Agreement with the Children's Aid Society on February 10, 2005, to run from February 15, 2005 to May 15, 2005. Wesley obtained the residential care he desperately needed, but Jennifer Bray questions why she has had to give up her parental rights to obtain care for her son. She says "its like a Catch-22 situation."

31 The Temporary Care Agreement, of course, is only an interim solution. The next step, if an alternative solution is not found soon, is a society wardship, and ultimately Crown wardship. When Ms Bray considers the possibility of losing permanent custody of her son, she is defiant "There is no way I'm going to lose my son to the system for reasons that are unjust. It's not going to happen." Already Ms Bray has felt the humiliation of having to rely on the Children's Aid Society – of having to report to a government agency before visiting her son – of having them hold his health card even though she attends his medical appointments with him. She feels like the process of losing her parental rights has already started, and unless something is done, she will be right. She is in counselling coping with the aftermath of a system that has failed her as a parent.

Jesse, London, Ontario

32 Cynthia Cameron's 14-year-old son, Jesse, has been diagnosed with Attention Deficit Hyperactivity Disorder, Dandy-Walker variant (a brain injury), Autism/Pervasive Development Disorder and Seizure Activity. His behaviours include head banging, head butting, spitting, aggression towards others, and destruction of property. He has two siblings a twin and a six-year-old brother. For 14 years, Jesse's parents have struggled to cope with their son's disability. Cynthia Cameron says that "We're grieving for a son we never had...over the years, it has been a heart-breaking, heart-wrenching experience."

33 In May 2002, a meeting convened by Community Services Coordination Network (a non-governmental community case resolution mechanism) recommended that Jesse's name be placed on the wait list for long-term residential placement. In September 2002, Community Services Coordination Network informed Ms Cameron that Jesse was at the top of its list and next in line for services. Two years later, Ms Cameron was advised that Jesse continued to be at the top of the residential wait list.

34 Jesse is almost six feet tall and weighs over 160 pounds. As he has grown, his aggressive behaviours have become more unpredictable, frequent, and intense. In June 2004, Jesse entered the Child and Parent Resource Institute in London on an urgent basis for a medication review. In July 2004, in a routine consultation a Developmental Pediatrician suggested that Ms Cameron and her

husband consider residential placement for Jesse "sooner than later." It would be absolutely prohibitive for the family to attempt to fund a placement privately. For example, the annual cost of his current placement is $82,855.

35 Ms Cameron contacted their Community Living London Family Support Worker who agreed that out-of-home placement was required, given that Jesse's behaviour was becoming more difficult to contain without putting the family at risk. He was threatening members of his family and had become very physically and verbally aggressive. Yet there was no place for Jesse. Ultimately, the Family Support Worker assisted the family in contacting the local Children's Aid Society. The Children's Aid Society located a group home in Barrie, 300 km from Jesse's home, and the family was given 24 hours to decide whether to accept this option. Ms Cameron and her husband reluctantly agreed to enter into a Temporary Care Agreement in August 2004 to provide Jesse with the specialized support, resources and staff available at the home. The Temporary Care Agreement was extended on consent from February 17, 2005 to August 17, 2005.

36 The long round-trip visit to Jesse every other weekend at the group home has taken its toll on his family, financially as well as emotionally. Cynthia Cameron explains that he is becoming a stranger. She is desperate to have him closer to home. However, she says that while the infrastructure exists to provide residential care in their area through Community Living London, the funding does not. Ms Cameron's continued efforts to obtain Ministry funding for residential placement in the London area have been unsuccessful.

37 Ms Cameron did not want any of this. She tried to persuade the Minister of Children and Youth Services to enter into a Special Needs Agreement, provided for in the *Child and Family Services Act*. She wrote two letters requesting an agreement. She finally received a letter dated March 24, 2005, from Peter Steckenreiter, the Regional Director of the South West Region of the Ministry advising her that he would be considering her request. However, Ms Cameron's request was denied two weeks later on April 7, 2005. Mr. Steckenreiter stated he had considered the following factors in arriving at his decision:

- The urgency of need for measures to reduce the risk of immediate health and safety of your son
- The support needs of your son and family
- The availability of ministry-funded supports in the community
- The availability of other formal and informal supports for your son and family
- The availability of funds

38 Ironically, the Temporary Care Agreement she had entered into for Jesse seemed to have worked against her. Mr. Steckenreiter reasoned in part that under the Temporary Care Agreement Jesse was receiving support from the Children's Aid Society and that this eliminated any risk to Jesse's immediate health and safety. He felt that the Temporary Care Agreement allowed Ms Cameron to remain involved in Jesse's life and to participate in decisions related to his health and well-being. He also commented that the Temporary Care Agreement could be extended for an additional twelve months after the expiry date of August 17, 2005. Accordingly, in his view there was no immediate risk of Jesse becoming a ward of the Crown. The letter concluded by stating:

> Provision of discretionary services by the ministry or its funded agencies is based on available funding. No additional funding exists at this time. There continues to be opportunities to work with CSCN (Community Services Coordination Network) to provide services for your son closer to home. As you are aware, your son remains on the priority wait list and should funding become available, services can be coordinated through CSCN.

39 This response provided cold comfort to Cynthia Cameron whose son had already been on the priority waiting list for three years. Ms Cameron is not satisfied with a resolution that leaves any degree of custody, even on a temporary basis, with the Children's Aid Society.

40 Mr. Steckenreiter's response to the request for a Special Needs Agreement highlights an important area of uncertainty. Contrary to the advice of Mr. Steckenreiter, who said that the Temporary Care Agreement could be renewed for a second year, Ministry counsel advised my office that a single Temporary Care Agreement can only exist for 12 months. However, if a child comes *back* into care *at a later point in time* then a new agreement can be entered into for up to 12 months. Meanwhile the Executive Director of the Children's Aid Society of London and Middlesex told my investigator that a child can only be on a Temporary Care Agreement for up to 12 months in total although he has been told by the Ministry's Regional Office that Ms Cameron's particular Agreement can be extended to two years. He is awaiting a formal letter confirming this. Meanwhile the Society's counsel is uncertain whether a Temporary Care Agreement can be extended beyond 12 months. Ms Cameron recently told us that a social worker from the Children's Aid Society has confirmed that her Temporary Care Agreement will not be extended beyond 12 months, and that she will have to give up custody of Jesse in August 2005 to ensure that his placement continues to be funded.

41 When the Temporary Care Agreement does expire, wardship is the only option to continue care funded by a Children's Aid Society. When Cynthia Cameron considers this possibility she says that it would be humiliating, "logically and reasonably we know we don't have much of a choice but emotionally as a parent, it's the ultimate betrayal for a child to give them up." Already Ms Cameron has had to strenuously object to a clause in the original Temporary Care Agreement that would have given the Children's Aid Society the deciding vote in the event of a disagreement concerning Jesse's educational plans. When Jesse was formally suspended from school the letter was addressed to the Children's Aid Society not to his parents. Cynthia Cameron describes the anxiety of having to deal with the Society, "I'm under this veiled threat...the system has the trump card which is our children. It's very scary." Has she been forced to relinquish temporary custody of her son? Cynthia Cameron says yes, "I think we are forced because we're left with no option. If he can't be at home and he needs a group home placement then they tell you call the CAS."

42 Ms Cameron has worked relentlessly to solve Jesse's situation. She has spoken with the media and on March 31, 2005, Shelley Martel, M.P.P. raised the matter in the Assembly with Ms Cameron present in the Gallery. Ms Martel referred to Ms Cameron's situation again in the Assembly on May 2, 2005. The Minister responded by stating:

> The family that the honourable member mentions has come to this chamber, and yes, we have written to this family. We do not enter into special-needs agreements. Our solution is not to do one-offs, as has been done in the past. Our solution is to build capacity, so that all children who have severe special needs will access these services, not just those who have the political astuteness to come to this gallery. That's unfair, that's unethical, and until we build capacity, we will not be doing these unethical events.

43 The Minister's response was not only disappointing, but also disconcerting. First, there was the proclamation that the Ministry does not enter Special Needs Agreements. When Ms Cameron wrote to the Minister, she was not informed of this. She was told her request would be considered and that the Ministry's Regional Director had the authority to enter into such Agreements. In the meantime, on that very day the Minister responded in the Assembly that the Ministry does not enter into Special Needs Agreements senior members of her staff advised my Office that it is still possible to obtain a Special Needs Agreement. Society Regional Directors have the discretion to enter into such agreements. They just have not done so for many years. One is left to wonder whether Ms Cameron's request for a Special Needs Agreement received

genuine consideration, or whether the denial of her request was a foregone conclusion. If so, why was she not told outright?

44 The Minister's response was confusing for another reason. Ms Cameron is left to wonder what is so unfair or unethical about her request, or about her effort to get care for her son. It was her first responsibility as a mother to do that. Nor does she understand what is wrong about her efforts to bring attention to a serious situation that has been unattended for too long. Where is the unfairness? She is not asking for more funds. Her son is now in care at public expense. She simply wants him to be cared for without the loss of her rights as a parent.

Jordan, Tavistock, Ontario

45 Bonnie McLaren's 15-year-old son, Jordan, has Asperger's Syndrome, Hydrocephalus and XYY Chromosomal Karyotype. During the past year, Jordan's behaviour has progressively deteriorated to the point where he requires constant supervision, 24 hours a day. Jordan is six feet, four inches tall and weighs 222 pounds. His rapid growth may be the result of the four neurosurgeries he has undergone. His size makes his unpredictable, often volatile behaviour a significant threat to the family's emotional and physical well-being. Mrs. McLaren describes him as having "a man's strength and very poor impulse control." Mrs. McLaren's older son, an 18-year-old, has Asperger's Syndrome and Attention Deficit and Bipolar Disorder.

46 Mrs. McLaren explained that since 2003, Jordan's needs have exceeded what can be provided in a home setting. She said "Two years ago we knew we were in trouble. We knew ...we were not going to be able to keep up to this..." Bonnie McLaren explains, "our world has become incredibly small." A Registered Nurse, she has had to make sacrifices in her career and has opted to work nights so that she is there when Jordan comes home from school. Meanwhile her husband works days so he can care for Jordan in the evening. When Jordan is with them, the McLarens are virtual prisoners in their home. Bonnie McLaren comments:

> You're life becomes your house. You can't participate in the community...I say we're in the community but not of the community, we don't partake in anything. We came here originally because we had connections with the community – family, church, our local GP, we had friends in the area – our social set now belongs to receptionists in doctors' offices... We don't do anything spontaneously, nothing. We can't go anywhere without Jordan [and] Jordan can't go anywhere.

47 The McLarens have had to "disengage" from their church, their only link to the community because Jordan could not attend. Even now, when they have a worker come on Sunday morning, they are simply too exhausted to go.

48 Mr. McLaren has suffered health problems that are exacerbated by the concerns surrounding caring for his son. Mrs. McLaren describes her older son's chronic grief, struggling with a younger brother, who has grabbed his hair and thrown him to the floor and has threatened him with a butcher knife. Jordan's unpredictable behaviour has included incidents of choking others. Mrs. McLaren fears for her safety and that of her family. Mrs. McLaren describing the emotional impact on her family of trying to deal with Jordan, says, "you feel like someone has died all the time – chronic grief. You bury your hope, you bury your optimism…you cope by letting things go – you have to let go – relationships – you have to let go of career… you have to let go of all that – I'm still an RN, I'm working nights – so I can take him and [his brother] to doctor's appointments…seventeen doctors appointments a month…."

49 On December 19, 2003, the Community Services Coordination Network recommended that Jordan be identified as needing a long-term placement. In August 2004, it commented that the community identified Jordan and his family as high risk for physical danger and emotional breakdown. Jordan's Pediatrician placed an extremely high priority for Jordan's placement, noting that Jordan's diagnoses and his condition called for something beyond what the community agencies could do. In September 2004, Mrs. McLaren's older son's physician reported that he had been severely affected by his younger brother and that he was at risk.

50 The McLarens are entitled to 18 hours of assistance a week through the Special Services at Home Program. However, they have had difficulty obtaining, training and retaining workers to assist with Jordan. Currently, Jordan is at the Child and Parent Resource Institute on treatment admission. While he is there, Mrs. McLaren uses her allocated hours to assist on weekends when Jordan comes home.

51 Mrs. McLaren is frustrated because the family has been told that the only way to obtain a funded bed for Jordan is to abandon him to the Children's Aid Society. Mrs. McLaren is not interested in doing this because of the risk of restricted access to her son, diminished participation in decision-making, and most disturbing of all, the strong possibility that Jordan could be placed hours away from home.

52 The Ministry's file on Jordan confirms that his case is "primarily a resource issue and not a protection matter." In December 2004, the Ministry informed Mrs. McLaren that it could not meet the demands of all families in exactly the way they wished and that in many communities the demand for supports exceeds available resources. The Ministry encouraged Mrs. McLaren to continue to work with Community Services Coordination Network and the local

community to explore all opportunities available for Jordan. She has been doing so, and she has been forced as a result into considering a desperate solution.

53 Jordan will be discharged from Child and Parent Resource Institute on May 13, 2005. The McLarens cannot pay his residential care costs privately. At $200 to $350 a day, it is well beyond the family's means. Unless there is a dramatic and unexpected breakthrough in public funded community opportunities, the family's only option will be to go through the local Children's Aid Society. She knows that she can refuse to pick up Jordan when he is discharged. She knows that this will trigger Society involvement. She has been cautioned by the local Society that if Jordan comes within its custody there are no guarantees regarding parental rights or location of placement. So far Bonnie McLaren has resisted making the choice, but, in her words, the system has left her "between a rock and a hard place."

Dylan, Stratford, Ontario

54 Jeanette and Chris Niebler are the parents of triplets. At just under two years of age, all three children were diagnosed with Autism and began receiving therapy. They are now nine years old. Tragically, the family is now also coping with one daughter's continued Autism and the other's treatment for a rare uterine cancer. They are also coping with the stress of attempting to get appropriate care for their son Dylan. Dylan is essentially non-verbal, although he can say some single words. He continues to require toilet training and functions at the level of a two to three year old.

55 For a time when Dylan was a pre-schooler he received Intensive Behavioural Intervention through a Ministry Program but, in December 2001, he was discharged because of his age. Once this Intervention ended, Dylan's aggression escalated to the point where he became a danger to himself and his sisters. While at home, Dylan was at risk of injuring his more fragile sisters and had to be supervised closely at all times. He was locked into his room at night so the family could sleep. The Nieblers received six to eight hours a week assistance through the Special Services At Home Program and later, as Dylan's behaviour deteriorated, they obtained some respite care every other weekend. The family received $150 a year for babysitting through the Assistance for Children with Severe Disabilities Program for Dylan.

56 By the summer of 2002, it became obvious that Dylan needed placement in a residential facility. The Community Services Coordination Network met in November 2002 and agreed Dylan was a danger to himself, his sisters and parents. Dylan was placed on a waiting list for residential funding.

57 Ms Niebler explained that, "out of desperation at CSCN's (the Community Services Coordination Network) lack of funding" in the winter of 2003 she contacted the Children's Aid Society and asked if it could find a residential placement for him. Dylan spent some time in the Child and Parent Resource Institute in London for treatment and in April 2003, after Ms Neibler signed a Temporary Care Agreement he was placed in a group home in Waterloo under the care of the Children's Aid Society. The Agreement was renewed in November 2003.

58 In May 2004, Ms Niebler appeared in court to make Dylan a society ward in order to maintain her son's residential placement. The Children's Aid Society sought wardship on the basis that Dylan had been abandoned. In its application, the Society explained that Dylan was in a residential placement under a Temporary Care Agreement and that his parents were unable to resume his care and custody. Wardship was granted based on a statement of agreed facts.

59 On April 26, 2005, the court considered a request to extend Dylan's society wardship by six months. Ms Niebler responded to the court summons requesting a six-month extension until my investigation is completed. The Children's Aid Society agreed, and the matter was adjourned for a month, at which point the six-month extension will be considered. However, time is running out. If Ms Niebler does not receive funding for a residential placement through Community Services Coordination Network, in order to remain in his residential placement, Dylan will ultimately have to be made a Crown ward.

60 The Nieblers, already taxed with tremendous personal problems have to endure the indignity of characterizing Dylan's issue as one of "protection" if they are to obtain a residential placement. Ms Niebler is frustrated by her predicament - "it's a Catch-22." She explains:

> to get a placement children's aid had to say he was a danger to his sisters, a child endangerment issue, which is the absolute truth, but the child safety issue is only because of his autism. It is not a child protect on issue. It's an autism issue. I think that's why I am most upset with the Ministry now, is that they're trying to say that its not a disability issue, it's a child protection issue and its not. That's absolutely ludicrous.

61 Officially, Dylan is a child in need of protection. That is what the courts have found based on an agreed statement of facts. However, when one of my investigators contacted the Children's Aid Society last December, she received a more candid description of the situation, one that echoes Ms Niebler's comments. The Children's Aid Society official explained that there are no protection issues in Dylan's case; the issues are purely Dylan's mental health

issues because of autism. She said that Dylan warranted placement in a special facility and the bottom line is he needs out-of-home placement that his parents cannot provide. She confirmed that there are no concerns about Jeanette Niebler's ability to parent her son.

62 Ms Niebler would like to have her son at home but realizes that this may not be realistic:

> As much as I would love to have him at home, it's probably not very practical to think I could have him, but in my dream world he would be at home and I would have help and workers, but that will probably never happen. But I still shouldn't have to give him up.

63 When Ms Niebler contemplates Crown wardship she knows she will lose her parental rights permanently, and in her own words "that is just WRONG." However, she also knows, under the present system, she has no other choice.

Keegan, St. Marys, Ontario

64 Lora Lee Pyne is a single mother of 16-year-old Keegan, who has Autism and Obsessive Compulsive Disorder. Her other son is 12 years old. Keegan's obsessive-compulsive traits became increasingly difficult to manage as he grew older. He became locked in his rituals. He performed tasks repeatedly. For instance, in the mornings he might need to dress and undress seventeen times before he was ready to proceed to the next stage of getting ready for school. Keegan is difficult to dissuade from this kind of behaviour. He becomes aggressive if he cannot finish a task in the fashion he deems appropriate. He has pushed and shoved others. He once injured Ms Pyne, who required treatment for a shoulder injury she sustained. Keegan also engages in self-abusive behaviour, slapping himself in the face and the thighs. When Keegan is obsessed with a task he is impervious to danger; he has run across the street without any concern for his own safety and wandered away from his father's apartment in the night. At school, Keegan had his own classroom modified to reduce stimuli. Ms Pyne explains that Keegan's level of functioning depends on the task. In terms of his personal care and hygiene, he functions at a kindergarten/grade 1 level. Socially he responds at a grade 3 level. However, Keegan has no interaction with peers or with his brother.

65 Ms Pyne described how Keegan would awake repeatedly in the night. She began to suffer from sleep deprivation as a result. She also had to cope with her younger son who has been negatively affected by his brother's situation. Ms Pyne felt as though she had become a hostage in her own home, as Keegan could never be left alone. The eight hours a week of assistance from the Special Services at Home Program, occasional weekend respite and Assistance for

Children with Severe Disabilities funding, proved insufficient to relieve the stress on the family.

66 In 2004, the Pyne family reached a crisis point. Ms Pyne was exhausted, terrified and unable to cope. Things came to a head for her on May 3, 2004, when Keegan refused to leave school at the end of the day. He was caught in a loop, repeating his actions of preparing to leave but he was unable to actually walk out the door. Ms Pyne, who had been summoned, attempted for five hours to persuade Keegan to come home. She became desperate and eventually the police were called and assisted in physically removing him. He was admitted that evening to a psychiatric facility where he stayed for eight days.

67 Ms Pyne realized she was "totally burnt out" and could no longer care for Keegan in the home. This was a devastating experience for her, as she explains, "The big thing is that I failed. Sixteen years, ten of which I did by myself…and to turn around and say I can't do this anymore was really hard." Ms Pyne turned to the community for resources to help her family.

68 In June 2004, the Community Services Coordination Network recommended that a permanent residential placement with adequate supports be developed for Keegan outside of his home and that the placement reflect the ongoing, long-term nature of Keegan's needs. This was important in order to ensure transition of support from the children's services system to adult services. The Network appreciated the inability of existing services and resources to meet this recommendation and noted that until such services and resources are developed and confirmed, other options would have to be explored. He was placed on a waiting list.

69 A representative of the local Community Living organization, who has supported Ms Pyne through her ordeal told us that at the meetings of the Community Services Coordination Network everyone was sympathetic but that the only other option that could be offered was resort to the Children's Aid Society. She expressed her surprise that no one seemed shocked by this. No one expressed outrage. It was simply accepted as the reality for any parent in Ms Pyne's situation.

70 Ms Pyne came to realize that with no community resources, the Children's Aid Society was her only hope for finding the care that Keegan needed. Yet time was working against her. She had kept Keegan home for as long as she could. He was about to turn 16 on July 22, 2004, and she had been told that if he was not a ward of the Society by then, he would be dealt with under the adult services system. Even a Temporary Care Agreement was out of the question because of Keegan's age. Her only option beyond waiting for resources that would never materialize was to surrender custody of Keegan to the state. Ms

Pyne knew that she had to act quickly and dramatically if she was going to be able to help her son and salvage her family.

71 In a June 4, 2004 letter from a social worker at the Ministry's Child and Parent Research Institute to the Children's Aid Society, the social worker identified that Society involvement was necessary to meet Keegan's needs. She wrote:

> Ms Pyne is a committed parent who loves her children. She needs assistance in finding a safe place for Keegan to live. She wants to be involved with Keegan's transition to placement and, most importantly, to remain involved with him after placement has occurred. Ms Pyne needs a temporary care agreement so that her son can have his needs met.

72 A Family Support Worker at Family Services Perth-Huron, a non-profit agency, wrote to a Program Supervisor, in the South-West Region office of the Ministry of Community and Social Services on June 28, 2004 saying:

> All the correct avenues have been explored and followed. At the Local Resolution Meeting all the members unanimously supported that an alternative residential placement was required and yet the committee was impotent to respond as there is no placement that currently exists which both matches Keegan's individual needs and is funded…
>
> Ms Pyne's only option at this time is to approach the Children's Aid Society and take desperate measures. As a result the CAS will have to apply for a Societal Wardship of Keegan by July 7, 2004. This diminishes her rights and responsibilities as a parent. The CAS has been very supportive but acknowledges their mandate does not allow them to support children in Keegan's situation…
>
> I am concerned for this family and what it means for this young man with autism. They are being put in an unconscionable position. The Ministry of Community and Social Services clearly stated in their position paper: "Making Services Work for People" that a family with a child with a disability should not have to turn their child over to the care of the CAS to have their child's special needs met. It also makes clear that those deemed of highest need would be most eligible for service.
>
> In spite of this, that is exactly what is happening.

73 Initially, the Huron-Perth Children's Aid Society took the position that there was no protection interest involved with Ms Pyne's case. An internal e-mail from a Program Manager at the Children's Aid Society to its Director of Services, dated June 9, 2004, included the following:

> I am concerned that we may be in a position to bring this child into care, even though he is not in need of protection, because there is no funding or a treatment resource that this mother is able to access on her own or through CSCN (the Community Services Coordination Network) given the child's special needs. I am further concerned because we do not have a resource in our system and will likely have to access a treatment bed in London, Kitchener or further away.

74 This message was forwarded to the Society's Executive Director on June 10, 2004, who in turn wrote to the Ministry of Community and Social Services' Regional Office on June 11, 2004. He noted:

> This is a case matter that I thought you should be aware of both due to the political nature that the situation is taking and also due to the special needs agreement type of service seemingly required that will turn into a protection matter *de facto* due to lack of funding.

75 The Ministry responded on the same date:

> ...the CAS is not the place for families to go to get support if they have not been successful in accessing services in the children's or developmental services sector. CSCN (the Community Services Coordination Network) should not be "referring" families to the CAS either.
>
> As you are aware, CAS's cannot enter into special needs agreements any longer and temporary care agreements are not intended for this type of situation. Families should be continuing to access CSCN and the various local providers...in an effort to access the services they need. ... If a family cannot continue to meet the needs of their child and tells you they are abandoning their child then the involvement of a CAS would be appropriate....
>
> The parent however, seems to be viewing your agency as the source of the funds to move her child....

76 Lora Lee Pyne's situation demonstrates the typical Catch-22 described by other parents. The local case resolution mechanism had recommended residential placement, but there was no funding available in the community. The Child and Parent Research Institute had identified that the Children's Aid Society's involvement was necessary to meet Keegan's needs. However, the Children's Aid Society recognized that there were no protection issues involved. The Ministry's response was that the Children's Aid Society could not provide funding unless there was a protection interest, for instance, if Ms Pyne stated she was abandoning her son.

77 Ms Pyne tried to enlist the assistance of the Ministry directly to no avail. The Ministry wrote to her on July 5, 2004 saying:

> I have spoken with [the Community Services Coordination Network (the CSCN)] and I understand that a number of service providers are trying to assist you and your family and they will continue to do so. … It is important, however, that the Ministry continue to reinforce that the appropriate body to consider both the needs of your child and the supports that may be available, is the co-ordinated access body, managed by CSCN. I indicated to you on the telephone that I am not aware, at this point, of new funding that would allow us to develop new service options for individuals on the waiting list. I would however, like to suggest that the service providers can often put creative strategies into place even when new funding is not available.

78 Ms Pyne had exhausted the "creative strategies" in the community by that point, and she made the difficult decision to relinquish her parental rights to Keegan to the Huron-Perth Children's Aid Society so that he could receive necessary supports. Keegan was made a society ward with Ms Pyne's consent on July 13, 2004. The situation that had the month before not been a protection matter had now officially become one.

79 A review of the court documents does not disclose any new or critical events occurring between June and July 2004 that would transform this case into a protection matter. In the July 6, 2004 Child Protection Application of the Huron-Perth Children's Aid Society it is simply asserted that Keegan had been abandoned and that his parents were unable to care for him. The irony is that far from abandoning her son, Ms Pyne was acting to help him. Based on the claims of abandonment and parental inability to care for a child, the Children's Aid Society asked for a court order making Keegan a societal ward for 12 months. It was stated in the application that:

> Ms Pyne attempted to seek assistance from various service providers. However, the primary response she received was that there was no

> funding or resources available. Ms Pyne reported becoming very frustrated and reported that she felt that the situation was a crisis, and that she required assistance immediately in finding a placement for Keegan.
>
> It is necessary for Keegan to come in the care of the Huron-Perth Children's Aid Society, as there are no other resources available. Furthermore, Keegan's presence in the home is having an impact on Ms Pyne [and her younger son's] well-being. It is important that Keegan be in a facility where all of his needs can be met appropriately.

80 A Child Protection Worker provided an Affidavit in support of the application in which she said that the service providers in the community, including the Child and Parent Resource Institute, reported that they had attempted all avenues in assisting Ms Pyne to find a placement for Keegan. However, there was no funding and, they greatly stressed that they would like to seek a temporary care agreement for Keegan for 12 months.... they felt that a placement for Keegan was urgent as the family system was deteriorating, and there was a concern for the health and well-being of all members in the family.

81 She noted that after a June 21, 2004 meeting with the Community Services Coordination Network in which it was again reported that there was a lack of resources available, Ms Pyne felt that her only resort was the Children's Aid Society, and she had stated, "I will drop him off at your door step if that's what it takes."

82 For Ms Pyne the most trying part of this sad episode was the need for a finding of "abandonment." This is something she says that she cannot get past. She is emphatic on this point, as she says, "I am not abandoning my son. I love my son." To underscore the fact that she had not abandoned him and that there never was a real protection issue Ms Pyne described how after the Court had ordered that Keegan be made a society ward, she drove him home where he remained from July 13 until August 25, 2004 until a placement outside the home was found for him. Desperation impelled Ms Pyne to engage in what can only be described as a formalistic charade.

83 Keegan was initially placed in a facility in Scarborough, which was a "real barrier" for Ms Pyne in her efforts to exercise her access rights. He later relocated to a facility closer to his family home. Ms Pyne now faces the humiliation of having to have all medical, dental, educational, daily living and behavioural issues concerning Keegan first go through the Children's Aid Society. To add insult to this injury, Ms Pyne routinely experiences difficulty contacting her Society worker to obtain or convey information. She says that she does not have the final say about what is right for her son. When Lora Lee

Pyne contemplates the future and the prospect of a permanent Crown wardship for her son, she is distressed, remarking,

> The idea of not being able to see him, of not having any of my parental rights – I know I have some now but not all of them – it's devastating … but I know that I just can't … live with him.

Jordan, St. Thomas, Ontario

84 Tina Grignard and her husband are parents of Jordan, an 11-year-old boy who has a dual diagnosis, Down syndrome and severe behavioural problems. The Grignard's have two other sons, aged 3 and 2 years.

85 Jordan is aggressive. He routinely hits and slaps others. He was suspended numerous times from school where he attended a class for children with developmental disabilities. Jordan ran away frequently. Ultimately the Grignards had to install latches in their home. Developmentally, Jordan is around 2-1/2 years old and is very low functioning.

86 Initially the family received some respite assistance in the community. However, as Jordan aged his needs increased and his behaviour became more difficult to cope with. Mrs. Grignard explained that in December 2003 the stress level in the house "was through the roof." The Grignards had to keep their younger sons with them at all times to ensure their safety. Mrs. Grignard explained that, "You couldn't even go to the bathroom without having to take one or two with you to make sure they were safe." Eventually, the Grignards "made the heart wrenching decision that Jordan could no longer safely remain in our home on a full time basis."

87 The Grignards tried to access a behaviour management program at the Child and Parent Research Institute but there was a one-year waiting list. They were advised by the Community Services Coordination Network that Ministry funding was not available for a long-term group home placement and if they wanted Jordan to have this service they would have to sign a Temporary Care Agreement with the Children's Aid Society. Mrs. Grignard says that they were warned by organizations they were dealing with that they would have to give up custody. She said one person from the Child and Parent Research Institute told her, "Be careful. This might not be an issue of you giving up custody. It might be an issue of them taking custody."

88 Having exhausted all services in the community, Mrs. Grignard finally contacted the Elgin-St. Thomas Children's Aid Society. The Children's Aid Society told Mrs. Grignard that if she signed a Temporary Care Agreement, it

would be able to provide funding for a placement for Jordan. However, she was told she would have to abandon her son. She recalls:

> ...they literally patted my back and said, "We know that that's not what you're doing Tina. We know you're doing what's best for your son. Unfortunately this is the terminology we have to use."

89 Seeing no choice left the Grignards signed a Temporary Care Agreement on April 1 2004. At that time, Jordan was living with a foster parent, who provided one-on-one care, during the week, and he stayed with the Grignard's on weekends. However, the foster arrangement fell through when the foster parent "burnt out." Jordan returned home and remained there for six or eight weeks while the Children's Aid Society searched for a placement for him. Eventually, a placement was found in a group home at the annual cost of approximately $82,763.

90 Mrs. Grignard explained that she wrote to the Ministry seeking assistance, but that the results of her efforts were not encouraging. The Regional Director wrote to her on February 4, 2005. He repeated the Ministry's position that children being taken into the care of a Children's Aid Society must meet the definition of a "child in need of protection" and if no protection concerns exist, the family must be referred to a more appropriate service provider. He also commented that in many communities, the demand for services and supports exceeds the available resources. Mrs. Grignard said she also spoke to a Program Manager at the Ministry of Community and Social Services who "was quite surprised our son had accessed residential care through the doors of protection if this is not a protection concern."

91 Mrs. Grignard described the stigma of being labelled as a parent dealing with the Children's Aid Society,

> You don't want to deal with the Children's Aid because you're automatically assumed that you've done something wrong to your kids ...I'm feeling like I'm having to defend myself. I'm not a bad parent. I didn't beat him up. This is not a protection concern.

92 The Children's Aid Society told the Grignards in a letter of February 9, 2005, that the maximum time a child could remain under a Temporary Care Agreement was a year and that when their Agreement expired on April 1, 2005, the only way for Jordan to remain in the agency's care was through wardship. They were informed that this would require the Society asking the Court to find that Jordan had been abandoned and was a child in need of protection under s. 37(2) of the *Child and Family Services Act*. Mrs. Grignard was served with an application for society wardship.

93 Fortunately during our review, and on the same day the Temporary Care Agreement was to expire, the society wardship application became moot. Mrs. Grignard received notice that Ministry funding for Jordan's placement had become available. That funding had apparently been transferred from another child who moved into the adult system. As Jordan was at the top of the priority list he received the funding. While this forestalled the need for the application, Mrs. Grignard notes cautiously that she has never received any assurance that these funds will continue until Jordan is 18.

94 Although Jordan's situation has been resolved, at least for now, Mrs. Grignard asked the Ombudsman to continue to investigate as the process she was put through was very stressful, "one that no parent should have to experience."

95 By way of sobering aftermath, in April 2005, Mrs. Grignard attended at court with the Children's Aid Society to withdraw the application for wardship. She described the shame and humiliation of this process:

> That was the most disgusting lowest point of my entire life. I so regret going. … When I walked in the corridor, there were about 30 people there and I wanted to die. I work for the Ministry, the rent geared to income office. I recognized many of our tenants in that court. It was kind of awkward. This is a small community…My CAS worker … walks in the door and I clearly heard three different people say "[the CAS worker] " is here and [she] comes, walks right over to me and sits beside me and starts talking. So now its been confirmed that I'm here not for divorce court but I'm here for Children's Aid. So I just wanted to die. I was just so embarrassed.

96 Mrs. Grignard commented that when the matter came before the judge, he said he didn't see any protection concerns when he read the paperwork and the Children's Aid Society said there were no protection concerns. The Judge accepted the application to withdraw. This episode is a poignant vignette of the formalism of the declaration of abandonment. Had no placement been found, the application would doubtlessly have been approved.

97 When Mrs. Grignard reflects on her experience and what she sees as the root of the problem she comments,

> I have always said Jordan is not coming home and if I have to give up custody I will. I've made that very clear to everybody right from the beginning. But I'm not going to go down without a fight. Whether I have custody or the Children's Aid has custody, the funding issue is still the same. Whether the Children's Aid forks out the bill each month to [the group home] or whether the Ministry forks out the bill each month to

> [the group home], the bill is still the same. So what is the problem? The problem is I lose custody.

Andrew, Strathroy, Ontario

98 Jim and Linda Limon are the parents of Andrew, an eight-year-old boy suffering from autism. Andrew is non-verbal and aggressive; he bites, kicks, hits and throws things. The Limons received various services over the years to assist with Andrew in the home, 12 hours a week from one program and 30 days a year from another. However, as Andrew grew the situation became progressively worse and they sought additional respite assistance. He broke a car window with his head when returning from one respite visit and his aggressive behaviour began to escalate at school. Andrew was segregated from other students and by December 2004, two full-time Educational Assistants supported him at school. Over the Christmas holidays Andrew bit a day care worker, and the Limon's were told he could not return. Later, they were told that he could return if he had two workers, but additional funding could not be found for this.

99 In January 2005, Andrew was admitted on an emergency basis to the Child and Parent Research Institute for treatment for a month. He was readmitted four weeks later. Andrew is on a priority waiting list for a residential placement in London. The Limons say they have been told that it is not realistic for them to expect a placement, as there is no government funding available. They say that it was explained to them that other parents have been successful in obtaining placements by going through the Children's Aid Society and saying they are abandoning their child. This is a very emotional time for the family. There does not appear to be much hope of Andrew getting a placement when he is discharged from the Child and Parent Research Institute in June or July 2005. However, he is a danger to his parents and his five-year-old sister, who they must protect from him in the home.

100 When the Limons contemplate becoming involved with the Children's Aid Society they are bewildered,

> CAS is for kids that are abandoned and neglected and Andrew... he's probably a lot better taken care of ... than most normal children are because he requires attention every second of the day...

101 The Limons also consider "the repercussions of what people would think ...from our friends and people who knew us in the community" if they were to officially "abandon" their son.

102 The Limons do not understand a system that does not place children like Andrew in group homes and let parents remain their guardians. Mrs. Limon wonders, "why would they need to take that away from us now, I want to be a voice for Andrew for as long as I can.... It isn't his fault. It isn't our fault." The Limons' confusion is understandable. We should all be confused.

Facing the facts: there is a problem

103 How prevalent is this phenomenon? It is impossible to say precisely. Senior Ministry officials advised my Office that the Ministry is unaware of how many children with severe disabilities are currently in the protection of Children's Aid Societies either under Temporary Care Agreements or society or Crown wardship orders because their parents are unable to provide necessary residential care. The Ministry advised that it has never investigated the issue of whether there are Children's Aid Society files in which protection concerns have been "manufactured" so that children with severe disabilities could obtain residential placement.

104 The Child Advocate said during her interview with us that there is an upward trend in such cases. She noted that in the last six months her staff was made aware of 30-35 cases of children with special needs going into care or facing the risk of going into the care of the Children's Aid Societies. My investigators contacted 53 Children's Aid Societies and asked them for the number of children in this situation. Based on the 40 Societies that provided information, we identified approximately 113 children who are under the care of Children's Aid Societies because necessary residential care was not available elsewhere. Some of the Societies reported that they had no children under their care meeting this description, while one had 17 children in this situation.

105 Not surprisingly, the Government of Ontario agrees that child protection regimes are not being used properly if they are being employed as a means to find residential beds for special needs children with capable parents. In a Ministry Contentious Issue Report dated November 8, 2004, found in the Ministry's file relating to Jordan McLaren, the Ministry notes:

> The services of the CAS are only available in response to a protection issue, as defined by the CFSA, and a Temporary Care Agreement (TCA) is to be used only when a family is "temporarily" unable to care for a child. Therefore, a TCA is not an appropriate response to the need for a long-term residential placement.

106 This is consistent with the position taken by the Government in a policy statement it issued on January 8, 2001, in which it reaffirmed that:

> … the use of child protection resources to provide services/supports to children where no protection concern exists is inappropriate and that these needs are best met by community service providers. If no protection exists, the family must be referred to more appropriate service providers with a mandate to provide services to special needs children.

107 There are those within the system who deny that there is a problem. Mr. Peter Steckenreiter, Regional Director, South West Region, emphasized when he met with my investigators that children are under Temporary Care Agreements because there are protection issues. A number of Society officials supported this position. They said that with these children there is always a component of protection.

108 One official we spoke to said, however:

> the Ministry is very clear that children cannot come into custody when the only issue is financial, our party line is that it must never happen, but it does….

109 It is obvious to me from the cases I have examined, including the heart-rending accounts I have profiled in this Report, that there is indeed a problem. Without question Temporary Care Agreements and wardship orders are being used instrumentally, out of desperation, when child protection in its classic sense is not the real concern.

110 To appreciate this one need merely consider the purpose of Temporary Care Agreements and wardship orders. This can best be done by looking at what they entail. In different measure they each give Children's Aid Societies or the Crown the power to make parenting decisions, and they take that power away from a child's parents. When one considers their effect, it is obvious that these measures were developed to address *parental* incapacity. There is simply no need to remove *parental* authority from those who are capable of exercising it responsibly. The parents we encountered during this investigation are not incapable of exercising sound parental judgment. The opposite is true. They are simply in need of financial support in order to obtain essential residential care for the children they love. The last thing they need is someone to exercise choices on their behalf. There is no rational basis for depriving them of parental authority. It is therefore clear to me that their children are not in need of protection in any relevant sense; they are children in need of resources.

111 To be sure, as one official remarked, these situations are often "fragile." There are cases that can develop into true protection situations. I heard during the investigation from parents who said that when they refused to voluntarily relinquish custody of their children with special needs, local Children's Aid Societies successfully petitioned the courts for custody of their children. Lawyers representing families in this situation contacted me and confirmed that while in some cases Children's Aid Societies work cooperatively with parents, others will force the issue. Where parents of children with special needs lose control, however, it is not typically because they are intrinsically incapable of providing care. It is more often because the system has failed them for so long by not providing adequate resources that their ability to provide appropriate care has been undermined by the understandable stress they are under. One Society official we interviewed made the point. She referred to seven cases in her region in which the local case resolution mechanism had not come up with adequate or any resources that would meet the families' needs and the parents were worn out emotionally and physically. She said, "these are good parents but no longer able to parent out of sheer exhaustion."

112 While there are cases where real protection issues emerge because of the long-term failure of the system, it remains that in most cases the claim that a child is in need of protection is simply manufactured out of desperation. On the day I publicly announced my investigation into this issue, we received an anonymous call from a Children's Aid Society worker explaining, "that is exactly what occurs…we usually code such information …parent-child conflict – risk of abandonment." I have documented cases where parents contrived to endure the painful experience of "abandoning" their children, solely to get the help they required. We were also told by three other Children's Aid Societies that they had children in their care not because of protection issues, but because their community services or funds were unavailable. One society had eight such children, who were either under Temporary Care Agreements or Crown wardship.

113 A number of officials from community case resolution/access mechanisms referred to children going into the care of Children's Aid Societies to obtain residential services. Two officials said unless parents are very wealthy, the Children's Aid Societies are the only guardians who have the financial resources to pay for residential treatment. This is happening. It cannot be denied.

114 To see how easy it is for responsible officials to fail to appreciate that the problem exists, one need merely refer to the comments made by the Minister of Children and Youth Services on May 2, 2005 to the Assembly when she was questioned about what had been done in the face of a Child Advocates' Report

relating to the failure of community services to find placements for 30 special needs children who required special needs care. She said:

> The report was written in February, it was given to me in March, and I did indeed immediately act. Those 30 families were given the services they needed, following the process of the communities solving the problems and finding the resources for those children, and they didn't have to go to the courts to give up custody of their children.

115 In fact those families included the families of Wesley Gray, Jordan McLaren, Jesse Cameron, Keegan Pyne and Jordan Grignard, whose cases are chronicled in this Report. Of those five, only two are receiving support through community funding, Jordan Grignard and Jordan McLaren, and Jordan McLaren is due to be discharged on May 13. His parents are likely to face the cruel dilemma of deciding whether to invoke the child welfare system that impelled the other three families, the Grays, the Camerons and the Pynes, to place their children in the custody of Children's Aid Societies. Contrary to the Minister's statement Keegan Pyne was made a society ward by the Courts in July 2004. These cases are not "solved problems." They are problems lost in the eyes of government in the complexity of the situation. Children in this province are going without residential care or finding it at the cost of their parents losing custodial rights. We can no longer be willfully blind to it. In fact, finally on May 9, 2005 the Minister acknowledged in the Assembly, "This should not be happening. I understand it is happening."

The funding issue is about "allocation," not "floodgates"

116 Without question, the misuse of child welfare regimes is the result of funding issues. Many Society officials blamed lack of community funding for the phenomena. One Society official explained that the Ministry "doesn't fund community services well…we are the bankers for the system, at the end of the line." In the result, the child protection system that was never intended to be used to solve the problem is being engaged inappropriately because Special Needs Agreements are no longer available and there is insufficient funding through other Ministry sources.

117 My staff met with officials from the Child Advocate's office, who confirmed that the crisis that has arisen for parents of children with severe disabilities stems from a lack of resources. They said the Ministry is focusing on in-home supports for children with special needs and there is a shortage of base-funded beds. They explained that it is more likely to find a bed in a per diem facility because they are more expensive; $400-$600 per day. The situation is exacerbated by the fact that children are "aging in place." There are adults occupying beds designated for children. For example, in Thistletown Regional

Centre for Children and Adolescents, 14 of 15 beds funded for children are occupied by adults. The Child and Parent Research Institute provides only short-term residential care.

118 The Ministry understands that the underlying question in finding suitable accommodation arrangements for those with special needs is about funding. Jessica Hill, Deputy Minister, responded to the notices of intent to investigate issued by my Office by stating:

> The Ministry of Children and Youth Services funds a range of non-mandated, community-based services throughout the province to meet the needs of children with behavioural, emotional, physical, mental and/or other disabilities. Within local service systems, every effort is made to support families to maintain and nurture their children at home and within their communities. However, in many communities the demand for supports exceeds available resources, resulting in delays in accessing required services.
>
> The Ministry and local communities continue to face the challenge of trying to meet the need of children and their families within finite financial resources. All available funding to support children is provided to local communities in order to meet the needs of those who are the highest priority for service. In order to provide fair, transparent and single point access to Ministry-funded residential services, the Ministry has implemented access mechanisms in communities throughout the province. Through the local access mechanism, community-based prioritization and resolution processes have been established to ensure that services are provided to those deemed to be most in need, as resources become available.

119 Not surprisingly, the Ministry response to requests from families who are caught in the cross-hairs of the child welfare system is to play the "floodgates" card. A Ministry note regarding Jordan McLaren that describes the issues facing the Ministry raises the prospect that if the Ministry were to assist the McLarens it would be opening the "floodgates" to similar requests. The note states:

> Parents perceive the Ministry as bowing to negative publicity even though Ministry staff and local agencies are taking great pains to reinforce the message that this is business as usual. Once the Ministry accepts the financial pressure to accommodate this child, we open the doors to other families making the same request/demand.

120 Governments do, of course, have to act in a fiscally responsible manner. Yet it is far too easy to be paralyzed into inactivity by floodgates concerns. Any government refusing to act on this basis is obliged to ask how meritorious those concerns are – how grounded are they in fact? In the case of placing children with special needs in residential accommodation, the truth is that those concerns are not verified. Indeed, they are largely speculative, and in my opinion, clearly exaggerated.

121 The speculation stems from the fact that the Ministry does not know the precise cost of providing residential care for special needs children. When asked whether the Ministry had any idea of the cost of residential care for children with severe disabilities provided outside of the child welfare system, Assistant Deputy Minister, Program Management Division, Ms Cynthia Lees explained:

> We fund the agencies and then the agencies within what we call an envelope then allocate the funding. Whether they're paying for a group home or foster home or whatever it is within that budget but we don't necessarily collect the exact cost by disabilities. Special Needs children isn't a program in itself; that's part of the problem; many children fit under that definition …it's a population of kids who access a range of services to support them.

122 Mr. Peter Steckenreiter, Regional Director, South West Regional Office explained that the community access mechanisms provide recommendations to regional offices and as funds become available they are allocated to service providers.

123 The uncertainty over the actual costs of providing full service residential care for special needs children who require it remains speculative not only because of residual uncertainty over the actual cost per child, but because the Ministry does not know how many children require this level of care. It does not maintain corporate information about the number of children with severe disabilities waiting for residential placement. Only Regional Offices collect this information using local case resolution mechanisms, and their statistics are not firm.

124 We asked Regional Offices in Ontario how many children with severe disabilities they were aware of who were awaiting residential placement. We were told these figures are subject to change, as priorities shift. Eight out of the nine Regional Offices were able to provide an immediate response. One hundred and sixty-nine cases were identified:

Central East – 16
Central West – 43
Eastern – 8
Hamilton Niagara – 8
North East - 0
Northern – 1
South East - 0
South West – 66
Toronto – 27

125 I appreciate that uncertainty over numbers can feed "floodgates" concerns, but we need to put this into perspective. While this sample is far from scientific what can be said with certainty is that in Canada's largest province, 150-200 cases, the likely range, hardly portents an intolerable financial bleed, especially given what is at stake.

126 In considering "floodgates" arguments it is important, in my view, to distinguish between two kinds of cases, those where parents have chosen to take the "child welfare" route, and those where parents have not.

127 For those whose parents have chosen to take the child welfare route, there would be no additional cost were the province to provide residential funding through community service programs. These children are already receiving funded residential care and the Province is paying for it. The Children's Aid Societies we contacted reported that there is a broad range of residential care available for children with special needs, ranging from foster care, which can be as low as $25 per day, to the cost of group home or institutional care which ranges from $90 to $450 a day, depending on the needs of the child. Indeed, given that long-term child welfare funding can only be provided after court costs are incurred, there is reason to believe that using the Children's Aid Society budgets is more expensive. Obviously, it rings hollow to tell a parent whose child is already being funded through the child welfare sector that the Government cannot afford to fund them through the community service sector. What is particularly galling in all of this is that it would cost the people of Ontario no more to permit these parents to maintain their dignity as parents, than it does to force them to give it up.

128 In the case of those parents who have not taken the child welfare route to secure residential placement for their children, two things have to be borne in mind when considering whether "we cannot afford to pay" is an appropriate response. First, it is not as though children with special needs who are now on waiting lists are costing the Province nothing. Ministry officials were asked what families do when a residential placement has been recommended by the local case resolution mechanism. They stated that while the children are waiting,

other services might be put in place to benefit the family - for instance respite, or Special Services at Home assistance. Those services are not free, even though they are a poor substitute for the residential placements that are required. They carry a price as well as administrative costs as families apply for them and appeal decisions. When the budgetary impact of providing residential placement is calculated it therefore has to be appreciated that what we are in fact speaking about is the difference in costs between the care that has been identified as necessary, and the money already being expended on partial, inadequate or stopgap measures.

129 The second point that needs to be kept in mind is that at any time, any one of these parents could effectively compel the Government to pay for their residential care by manufacturing protection issues.

130 In any responsible calculus, both sides of the equation have to be balanced. On the one side is the speculative cost of providing full residential service in cases where it is required. On the other side there is the certainty that families have pointlessly given up custody to get their children what they need and others whose children are still with them, are struggling to cope –living the kinds of lives and telling the kinds of stories captured in the cases that are profiled in this report. Somehow, when all of this is considered "floodgates" arguments begin to pale.

Endless Study and Inadequate Action

131 The problem of parents having to relinquish custody of their children to obtain necessary care is not a new one. It has been going on for far too long. There has been a legacy of study and inadequate action.

132 My predecessor investigated this issue over four years ago when the plight of two families was documented in media reports. His efforts and those of the Child Advocate, coupled with public appeals by affected parents, inspired the Government to respond, albeit with stopgap measures. The first step taken was to try to put an end to the misuse of the child welfare system. In January 2001, Children's Aid Societies were notified that when no protection concerns exist, families must be referred to community service providers. The second was to resolve cases on an *ad hoc* basis. The Government facilitated individual service agreements between service agencies and 16 families whose situations were considered to be critical. Children's Aid Societies were told to review cases in which the care and custody of children had been transferred to them solely for accessing service. As a result, by July 2001, 51 children had their case management transferred to a non-protection service provider in the community. Two Crown wardships were reversed. The third step taken was to create Special Needs Coordinators who would support the 54 existing case resolution

mechanisms, which had proved unable to meet the demand for services. By May 31, 2001, the Special Needs Coordinators had identified 230 families in need of additional services, including 143 requiring residential placement for a child.

133 These responses provided real solutions for the particular families involved and are to be applauded on that account alone. They did not, however, solve the problem. When this initial flurry of support waned, the problem recurred, which of course is why we continue to see waiting lists and why desperate parents are again resorting increasingly to the child welfare system.

134 The hope and expectation at the time was of course that long-term solutions would be found. With this in mind one of the recommendations that the Ombudsman made in May 2002 was that:

> The Ministry should obtain the necessary data to determine what level of residential services is needed for children with special needs in a timely manner and plan accordingly.

135 The Ministry responded by indicating it was developing a policy and funding framework for residential supports for children with complex special needs. The Ministry planned to have the residential framework completed by Spring 2003 and if approved, implementation of the framework would begin in 2003-2004. Needless to say, it did not happen. In the end, the recommendation, coupled with the Ministry's promise to report to the Ombudsman every six months, did little more than to provoke the ultimate in bureaucratic responses – "we are studying the matter." Indeed, that response has become such a routine one that each previous "six month letter" has served as a template for the next. Consider this:

> June 12, 2003
>
> As we discussed, the ministry is examining the spectrum of residential services available to children with special needs across the province. Since February, the ministry has completed a complex data collection exercise. Information compiled from this exercise will form the basis for the development of the residential framework. Detailed service and financial information has been collected for hundreds of transfer payment agencies and private operators across the province… a preliminary analysis of the information has been conducted and will be reviewed by ministry staff in each of the nine regional offices.

January 13, 2004

> As you know, the ministry is examining the spectrum of residential services available to children with special needs across the province. The ministry undertook a complex data collection exercise capturing detailed service and financial information for hundreds of transfer payment agencies and private operators across the province. A preliminary analysis of the information has been conducted and has been reviewed by each of the regional offices…

July 28, 2004

> As you know, the Ministry is undertaking a review of the spectrum of residential services available to children with special needs across the province. The Ministry undertook a complex data collection exercise capturing detailed service and financial information for transfer payments, private operators, directly operated sites and group homes run by children's aid societies…The Ministry's regional offices have completed an analysis of the information …

136 These letters refer variously to studies of the "spectrum" of residential services for children with special needs, "mapping" the location of residential delivery sites across the province, examinations of the sources for forecasting future and emerging needs in the residential system, the conduct of jurisdictional and literature reviews of residential systems internationally to identify "best practices," and finally, when the Deputy Minister responded three months late on March 31, 2005, we learned that there would be an even broader "study:"

> As you are aware, our work to date has been related primarily to for [sic] children with special needs, in group home settings. However, in keeping with the goals of the Ministry of Children and Youth Services to provide families with integrated and seamless services, a decision has been made to examine the broader children's residential system.

137 One is tempted to conclude that the six-month reports have been jargon-laden missives designed to create the illusion of progress while nothing concrete was being done.

138 Is that right? What happened to those studies? When my investigators met with Senior Ministry officials they explained that the inventory of residential services for the special needs population and mapping of those services was completed, but that the information dated back to 2001. The Ministry therefore did not undertake a "trends analysis" because the information needed was too old and had to be updated. As for the inter-jurisdictional review, it was received in

January 2005 but there have been no policy changes as a result. This is a dismal record.

139 More recently, attempts have been made to placate the Child Advocate with the promise of studies. On February 9, 2005 she issued her third report entitled *Special Needs Agreements: Guardianship or Critical Service: Parent's Dilemma*. One of her recommendations was that the *Child and Family Services Act* should be changed to reflect that children with special needs are entitled to service. She also recommended that the Ministry develop standardized criteria for determining who is at high risk, and in immediate need of an out-of-home placement. The Child Advocate commented,

> The [Office of Child and Family Service Advocacy] has reported on the dilemma of families with special needs children/youth having to give up guardianship in order to access resources since June 2000. While some significant steps were taken by the Ministry of Children and Youth Services to address this issue, it is apparent that this dilemma has persisted. As a result, the message to families is two-fold: that their high-risk children/youth are not "entitled" to resources and that case resolution and single point of access mechanisms have proved ineffective given the limitations around resources. These two issues have created significant systemic barriers which serve to sustain this injustice to families.

140 Trinela Cane and Cynthia Lees, two Assistant Deputy Ministers, responded to the Child Advocate's report on April 20, 2005. Their response? They indicated that the Ministry was undertaking a study of access mechanisms to identify best practices, a review of case resolution mechanisms to examine their effectiveness, and a comprehensive review of residential services. In addition, they noted that the Ministry had initiated province-wide community planning tables for children and youth with complex/multiple special needs that will identify better approaches.

141 My investigators asked Ms Cane and Ms Lees about these initiatives. Ms Cane explained that the review of case resolution mechanisms will begin within the next month and be conducted by an outside consultant. The review will be looking for best practices and should be complete within the next three to four months.

142 Ms Lee explained that the planning tables involve meetings with service providers, other Ministries, parents and regional staff. These tables are looking at creative and innovative ways to provide services. On May 2, 2005, Ministry officials advised that they were two weeks into the planning table process and hoped to have information back by the end of May/beginning of June.

143 All of this seems like *déjà vu* all over again. I do not want to suggest, however, that these initiatives are not being undertaken in good faith. This generation of studies may well bear fruit, but it is evident that there is reason for concern and despair. It is just that while the last round of fruitless studies was being vaunted as evidence of progress, Jennifer Bray developed post traumatic stress disorder trying to cope with Wesley. While all of this study was going on Jesse Cameron was threatening members of his family and making their home life intolerable while he languished on a waiting list. While all of this study was going on Bonnie McLaren and her husband were working different shifts, rarely seeing each other, and living under virtual house arrest so that they could care for their son. While all of this study was going on Dylan Niebler was being locked in his room so his family could sleep and Keegan Pyne was being taken to a psychiatric facility after refusing to cross the school threshold to go home. While all of this study was going on Tina Grignard was taking her young children into the bathroom with her to protect them from their brother. While all of this study was going on these and many other families have had to look to the child welfare system to help them when the relevant agencies could not. We may not know the final trend analysis of the studies that have been done and we may be left with incomplete data but there is a reality we do know beyond question. It is that this matter has been studied to death while real problems, known problems, are being ignored or glossed over, and while the crisis that was addressed with stopgap measures in 2001 has been allowed to recur. Enough study. It is time for action.

Solutions

144 There is a manifest crisis. It is immediate for those families who are in the child welfare system – they should not be there. There is an immediate crisis for those who require residential care but who are on waiting lists – they should not be there. An immediate crisis calls for an immediate resolution.

145 I am concerned from the response I am getting that nothing will be done and that this will be justified in the name of avoiding an *ad hoc* response so that a long-term solution can be crafted. My Office has been told that the redirection of children from Children's Aid Societies to community service providers that occurred in 2001 was a "one time event." When asked if the Ministry would consider a similar intervention now to address the cases that have come forward, Assistant Deputy Minister Cynthia Lees affirmed that instead the Ministry is trying to build capacity within the community to respond to the needs of all children and families. She stated:

> I think the reality is we have finite resources and what we're asking the community is to provide as many services as possible to those families and to do it in a way that is fair and transparent …

146 Ms Lees indicated that the Ministry would not facilitate service agreements between families and service providers, as it did for 16 families in 2001. She stated:

> I don't think we see this as the Ministry's role but rather as the community's role, to develop and provide the services. We fund the service provider but they have to provide those services. So we're hoping through the access mechanisms and all the other things that are in place in the community that that's occurring in the community.

147 A Ministry note relating to the Jordan McLaren case echoes comments made by the Minister in the Assembly of May 2, 2005, to the same basic effect. It notes:

> Without a systemic solution we will be faced with a series of "one off" cases that fail to develop community capacity to resolve local issues. We are at serious risk of being perceived as compromising the community based prioritization process even though we have emphasized that these children have been identified as high priorities within the process.

148 It is true, of course, that without a systemic solution a problem can be expected to recur. If we wait for a perfect systemic solution before acting we ignore those families who are in crisis and who could be helped now. As this case demonstrates, there is also the more pressing danger that the quest for a long-term solution can shield inaction. It can easily become an excuse for doing nothing. It enables a "we are studying the matter" response, or it invites a downloading of responsibility reaction, like sitting back and waiting for community service providers miraculously to find access on the basis of existing funding, something that will never happen.

149 It is obvious that there is a moral imperative to act now. Families are in immediate peril. Gladly, there is no need for anything drastic. There is an immediate and effective solution that will certainly solve the short-term problems and possibly the long-term problem as well. It is to remove the moratorium on funding of Special Needs Agreements and ensure that that power is exercised in good faith when it is invoked, on the basis of the evidence provided. Properly understood, Special Needs Agreements are not some kind of dirty *ad hoc* mechanism for giving squeaky wheels the grease. The opportunity to enter into such arrangements would be available to everyone, and if the authority conferred is exercised wisely, it can solve the problems I have described in this Report.

150 As I say, this solution is easy and obvious. The authority to enter into such arrangements remains part of the law of Ontario. Subsection 30(1) of the *Child and Family Services Act* provides:

> 30(1) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and a society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for:
>
> (a) the society's provision of services to meet the child's special need; and
> (b) the society's supervision or care and custody of the child.

151 Subsection 30(2) authorizes the Minister to enter into similar agreements. While the power has not been used in years, it remains there.

152 In spite of this, the Ministry has confirmed its position to my investigators that it will not fund any new Special Needs Agreements through Children's Aid Societies. This is troubling. I appreciate that, strictly speaking, the Government is not a "trustee" but it holds this power in the public trust, and if a trustee has a power that can be used to help a beneficiary, it is a breach of trust not to consider its use and when doing so, to apply it on the basis of appropriate criteria. Frankly, the decision of the Ministry to fetter its own discretion and that provided legislatively to Children's Aid Societies is not only disconcerting. It may also be of dubious legality. At the very least it is a practice not supported by its purported *raison d'être*. The official explanation for not using such agreements is that it is not necessary to have an agreement to access services for children with special needs. The record in this Report clearly indicates otherwise. Nor given their discretionary nature can a total moratorium be justified on fiscal grounds. The application of this mechanism can be controlled by applying careful review and discretion.

153 A number of Children's Aid Society officials we spoke to referred to Special Needs Agreements. We were told that Special Needs Agreements had been a "safety valve" for parents with children with special needs requiring high-level care. They enabled families to avoid the "crisis point" and to deal with a situation in a way that was "not punitive." One Executive Director explained that his Society's Board of Directors recently adopted the position of asking Government to make Special Needs Agreements more accessible and to use them to provide services for families who have children with special needs. Another Society official suggested that the government should go back to Special Needs Agreements, but that they should be administered by agencies other than Children's Aid Societies. She said,

it is bad enough that parents are dealing with a demanding child, and all those dreams that won't come true and then to have to give up custody…

154 Others say that the legislation should be amended to make it mandatory for Government to enter into Special Needs Agreements where the criteria for them have been met.

155 Frankly, there is merit in amending the legislation both to make Special Needs Agreements mandatory, and to remove them from the stigma of a "child protection" agency. Doing so would provide a right to residential care where needed that could be exercised in a relevant framework. I am reluctant, however, to make a recommendation that requires formal implementation. There is a need to act now. The immediate crisis can be alleviated simply by using the power the law already provides. Doing so could address two pressing problems. It would (1) enable parents to avoid the ignominy and stress of pointlessly abdicating parental responsibility to get what their children need, and (2) it would enable those who have not yet invoked the child welfare system to get their children off of wait lists. This Province would be a better place, and hardly any the poorer for it.

Conclusions

156 There are families in crisis in Ontario. There may be as many as 100-150 such families who, out of desperation, have been forced to give up parental rights in order to get their children the residential care they require. In most of these cases there was no need to strip those parents of parental rights because they are capable and loving parents, entirely able to act responsibly. These people are being forced by the weight of the intolerable burden of caring for their children with special needs, to sign agreements acknowledging falsely that they are unable to care for those children, or even to engage in what for most parents would be the ultimate act of betrayal – to declare formally, for the public record, that they are abandoning those children. They are forced to commit an act that is, in our society, normally characterized as an act of neglect. And there are perhaps between 150-200 families experiencing a related kind of crisis. These families are struggling to cope with children with special needs at home, even though professionals have said that in the interests of the family and of those children that the children need to be placed in residential facilities. Yet these parents struggle with intolerable home lives, knowing that their children's names are placed on a waiting list, sometimes for years.

157 When these parents ask why the government is not doing anything about these problems they are told about money. They are told that it would open financial floodgates. For those whose children are already in residential care under the child welfare system, this is a thoroughly unpersuasive response. The

government is already paying for those children. There can be no fiscal floodgates issues. The real question is why must the government insist as a condition of providing funding that capable parents give up their parental rights? There is simply no answer to that. Indeed, it is against stated government policy; no parent should have to give up their children in order to secure residential placement for them.

158 For those whose children are not in the care of the child welfare system but who are languishing at home playing the waiting game, floodgates arguments ring near as hollow. The government does not even know the size of the problem, and there is every reason to believe it is a contained one – perhaps 150-200 children in a province of millions. If these children were to be placed in residential care, the money being spent on their home care would help defray the cost. There are three further realities that make whatever is left of the floodgates argument un-compelling. First, at any moment these people can manufacture a child protection issue that would require funding. Second, if funding is not provided there is a risk that child protection issues will become real; why wait for the human condition to deteriorate before acting? Third, those who have not yet resorted to the child welfare system are either prepared to live intolerable home lives in order not to have to "abandon" their children, or they are unaware of their options. In any event, it just seems wrong to achieve fiscal savings on the backs of such people.

159 The bottom line is this is not a financial floodgates problem. It is an issue of the rational allocation of resources within a bureaucracy, and for those who are affected, this has to be galling.

160 There are additional reasons for anger for those parents who have indeed taken desperate action in moving their children into the child welfare system. They have endured the stigma and embarrassment of going before the law and posing as unfit parents. To make matters worse, their decision to do this has been greeted by some government agents as a tawdry and inappropriate act that misuses resources. They are treated as "queue jumpers" and system abusers. They are treated like tax evaders, seizing on loopholes. One need merely put oneself in their position to reject this kind of slur entirely. What they are is parents left in need of help by a system that does not function. They are simply doing what any responsible parent would do – achieve what is best for their children and get relief before they meltdown and their children really do need protection.

161 It is to our shame that we have allowed all of this to happen. It is even more shameful when we are willfully blind to it by persuading ourselves that the children in question are really in need of protection. The child welfare regime is intended to deal with children who are in need of protection because of the

incapacity of their parents – not because of the fiscal decisions of their government.

162 This problem has been ignored for too long. It is not the time for further study. This matter has been studied to death, so much so that the appearance is now created that those studies were mere instruments for delay rather than the source of data for decision. We know what the problem is. We know what the solution is. Remove the indefensible moratorium on funding of Special Needs Agreements. Use the mechanism that is already provided by law, and use it wisely and in good faith. Use the discretion it provides after first trying to stand in the shoes of those who are affected so that the intensity of the problem is understood. Use it after considering how much expense exercising that power will really add to the stopgap, inadequate programs and initiatives that are already being employed. Use it after bearing in mind that the applicant can, at any time, trigger an affirmative obligation on the part of the government to pay the costs of residential care by going to the child welfare system and saying they are abandoning their children. Use it and help families who are in crisis.

163 Jennifer Bray's case is not unique. A fit parent has had to give up parental rights for no good reason, other than as a result of a funding dance she was forced to perform around an inadequate support system. There are others like her. We should give her and the rest of them their dignity back. We are already taking care of their children. Why can we not do this without making them pay the price of relinquishing their parental rights? And we should ensure that others do not have to take this extreme step by ensuring that when special needs exist, there are the means to address them. In this day and age the Ministry of Children and Youth Services is failing, and it will fail again in the future if action is not taken.

164 On a final note, I feel the need to point out that parents have expressed palpable fear of the consequences of coming forward to my office to complain. They are concerned that they will be punished by the bureaucrats that they depend on to assist them. I intend to monitor the outcome of my report and vigorously act, if there is any sign of reprisal against those who have demonstrated the courage to speak out against this manifestly unfair situation.

Opinion

The Ministry of Children and Youth Services' failure to ensure that parents of children with severe disabilities are not forced to relinquish custody to Children's Aid Societies in order to receive necessary residential placements is unjust, oppressive and wrong.

[*Ombudsman Act*, ss. 21(1)(b)(d))]

Recommendations

I therefore recommend that:

1. **The Ministry of Children and Youth Services should immediately ensure that Children's Aid Societies identify situations in which children with severe disabilities have come into their custody because they require residential care, parental rights are restored in these situations, and funding is provided for residential placement outside of the child welfare system.**

   [*Ombudsman Act*, s. 21(3)(g)]

2. **The Ministry of Children and Youth Services should ensure that children with severe disabilities, who require residential care, are provided funding for such care outside of the child welfare system.**

   [*Ombudsman Act*, s. 21(3)(g)]

3. **The Ministry of Children and Youth Services should achieve recommendations 1 and 2 in the short term by removing the moratorium on funding of Special Needs Agreements.**

   [*Ombudsman Act*, s.21(3)(c)]

4. **The Government of Ontario should consider re-legislating the power to make Special Needs Agreements so that it is both mandatory and administered outside of a statute dealing with child protection matters.**

   [*Ombudsman Act*, s.21(3)(e)]

Ministry's Response to Preliminary Report

In accordance with subsection 18(3) of the *Ombudsman Act*, I sent a Preliminary Report outlining my preliminary findings, opinion and recommendations to Dr. Marie Bountrogianni, Minister and Jessica Hill, Deputy Minister, Ministry of Children and Youth Services on May 12, 2005. At that time, I requested that they respond with their comments by May 19, 2005.

The process set out in subsection 18(3) of the *Ombudsman Act* is intended to provide governmental organizations and persons that may be adversely affected by an Ombudsman report or recommendation with an opportunity to correct inaccuracies, and to dispute, accept or suggest modifications to the Ombudsman's opinions and recommendations before the Ombudsman finalizes his report.

I received a response to my Preliminary Report on May 19, 2005 from the Minister. She stated:

> Your research has brought the issue into greater focus and enabled families to share their stories. This is important, and helps us better understand the level of complexity faced by each of these families. These ideas, coupled with my own examination, are contributing to an important policy discussion that is well underway and that will, I can assure you, result in greater support for families who face these very real challenges.

She also stated that she looked forward to responding to my final report when I table it with the Speaker of the Legislature. This was the Ministry's opportunity to respond before I finalized my report. The Minister has not challenged the facts set out in my Preliminary Report, nor has she provided any substantive response to my opinion or recommendations. The Ministry has not shown any cause why my recommendations should not be implemented.

André Marin
Ombudsman

Ministry's Response
to
Final Report

Ministry of Children and Youth Services

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Ontario

May 24, 2005

Mr. Andre Marin
Ombudsman
125 Queen's Park
Toronto, Ontario M5S 2C7

Dear Mr. Marin,

Thank you for sending me your Final Report on the issue of services for children with severe special needs. I am writing to provide some further comment on the Report, both personally and on behalf of my ministry.

As a children's mental health professional and the Minister for Children and Youth Services, I am particularly dedicated to children's issues and to the treatment of vulnerable children in this province. That's why I appreciate your constructive recommendations to provide greater support for these and similar families. I support the direction of your recommendations and I am working on a specific implementation plan that I look forward to sharing with you shortly.

You are aware of the progress we have made in expanding the system through investments this government has made – totalling $74 million -a 15% increase specifically for children with special needs. Fundamentally, any strategy to improve access to services for families must consider both the short-term needs of families and also the long-term creation of a robust system that can continue to meet the needs of families on an ongoing basis.

As you note in your Report, efforts by past governments have attempted to resolve this issue with short-term approaches that could not ultimately be sustained. Instead, our initiatives will be backed by sound policy that will enable us to help families in a fair and consistent way. That work is underway and I am ensuring it moves forward aggressively.

I will continue to keep you informed of our initiatives and, soon, the measurable support they provide to families of children with special needs. Thank you once again for your fine work and for bringing greater light to this challenging issue.

Sincerely,

M Bountrogianni

Dr. Marie Bountrogianni
Minister

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